

REMARKS

In the Office Action, dated May 19, 2005, the Examiner rejected claims 1, 2, 5, 6, 7, 10-12, 17, 19 and 20 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,787,854. Applicants note with appreciation the Examiner's indication of allowance subject matter in claims 3, 8, 9 and 14-16. Reconsideration of the outstanding rejection is respectfully requested in view of the following remarks.

In paragraph 3, the Office Action rejects claims 1, 2, 5, 6, 7, 10-12, 17, 19 and 20 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,787,854. In support of the rejection, the Office Action asserts that "[a]lthough the conflicting claims are not identical, they are not patentably distinct from each other because they both describe a fin field effect transistor comprising a T-shaped fin where [sic] fin comprises an upper portion and a lower portion where the height of the upper portion ranges from 200 Angstroms to about 1500 Angstroms where the height of the lower portion ranges from 100 Angstroms to 1000 Angstroms, gate/source/drain regions adjacent to [sic] T-shaped fin." Applicants respectfully disagree with the Office Action's assertion that claims 1, 2, 5, 6, 7, 10-12, 17, 19 and 20 are patentably indistinct from claims 1-5 of U.S. Patent No. 6,787,854.

In accordance with M.P.E.P. 804, "[a]ny obviousness-type double patenting rejection should make clear ... [t]he reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue is an obvious variation of the invention defined in a claim in the patent." However, in rejecting claims 1, 2, 5, 6, 7, 10-12, 17, 19 and 20, the Office

Action does not, other than a mere allegation that these claims “are not patentably distinct,” provide any reasons why a person of ordinary skill in the art would conclude that the inventions recited in these claims are obvious variations of the inventions recited in claims 1-5 of U.S. Patent No. 6,787,854. Absent provision of such reasons, the rejection of claims 1, 2, 5, 6, 7, 10-12, 17, 19 and 20 under the judicially created doctrine of obviousness-type double patenting is improper. Applicants submit that claims 1, 2, 5, 6, 7, 10-12, 17, 19 and 20 are not obvious variations of claims 1-5 of U.S. Patent No. 6,787,854 and, therefore, are patentably distinct.

For example, claim 1 of the present application recites “a reversed T-shaped fin, wherein the reversed T-shaped fin comprises an upper portion and a lower portion, wherein a height of the upper portion ranges from about 200 Å to about 1500 Å and wherein a height of the lower portion ranges from about 100 Å to about 1000 Å.” The Office Action has not provided any reason why the “reversed T-shaped fin” having the “upper” and “lower” portions with the recited heights is an obvious variation of claim 1 of U.S. Patent No. 6,787,854, which merely recites a fin structure having a T-shaped cross-section with upper and lower portions that each have recited widths. Applicants submit that the specifically recited widths of the upper and lower portions of claim 1 of U.S. Patent No. 6,787,854 do not make the specifically recited heights of the upper and lower portions of claim 1 of the present application obvious.

As another example, claim 12 of the present application recites a “method of forming a fin field effect transistor (FinFET)” that includes “forming a reversed T-shaped fin, wherein forming the reversed T-shaped fin comprises: etching a first rectangular mesa using a rectangular mask having dimensions ranging from about 100 Å to about 1000 Å in width and from about 100 Å to about 1000 Å in length to produce the reversed T-shaped fin,” “forming source and drain

regions adjacent the reversed T-shaped fin,” “forming a dielectric layer adjacent surfaces of the fin” and “forming a gate adjacent the dielectric layer.” The Office Action, however, does not provide any reason or explanation why claim 12, which recites specific acts for forming a FinFET, would be an obvious variation of any of claims 1-5 of U.S. Patent No. 6,787,854, which recite features of a semiconductor device that in no way suggest, or are in anyway similar to, the specific acts recited in claim 12. Applicants respectfully submit that claim 12 is patentably distinct from any of claims 1-5 of U.S. Patent No. 6,787,854

In view of the remarks above, Applicants submit that claims 1, 2, 5, 6, 7, 10-12, 17, 19 of the present application are not obvious variations of claims 1-5 of U.S. Patent No. 6,787,854 and, thus, are patentably distinct. Since the Office Action has not provided any proper basis for concluding that these claims are patentably indistinct, Applicants request that the rejection of claims 1, 2, 5, 6, 7, 10-12, 17, 19 and 20 under the judicially created doctrine of obviousness-type double patenting be withdrawn.

In view of the remarks above, Applicants further respectfully request the Examiner's reconsideration of this application, and the timely allowance of the pending claims. To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,



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Date: July 29, 2005

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